Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1992

STATE OF CALIFORNIA,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF RIVERSIDE, *et al.*,

Respondents.

Petition For A Writ Of Certiorari To The Court Of Appeal For The State Of California Fourth Appellate District, Division Two

REPLY TO BRIEFS IN OPPOSITION

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I.

INTRODUCTION

The appellate court in this case did far more than merely announce a state rule that parrots federal law. In *refusing* to apply California's res judicata law, the court assumed the mantel of a federal court and sought to determine which of two conflicting federal rules is correct. The state court's misapplication of federal law presents a federal question.

The Oppositions' ancillary arguments against certiorari are equally unavailing. The state court's decision is final. Collateral estoppel was applied only to the state law adjudications in the federal action – *not* the CERCLA findings. Review by this court is warranted.

II.

THE COURT OF APPEAL'S DECISION RESTS SOLELY ON AN ERRONEOUS INTERPRETATION OF FEDERAL LAW

A. The Court of Appeal's Misapplication of Federal Law Gives Rise to a Federal Question.

The appellate court both characterized the issue as a federal one and endeavored from the outset to resolve it as a federal court would. So framed, the question is appropriate for review by this Court. The Oppositions' assertion to the contrary simply disregards this Court's well established practice of accepting such state court determinations for review:

> "It is equally well established, however, that this Court retains a role when a state court's interpretation of state law has been *influenced* by an accompanying interpretation of federal law. In some instances, a state court may construe state law narrowly to avoid a perceived conflict with federal statutory or constitutional requirements. [Citations omitted.] In others, in contrast, the state court may construe state law broadly in the belief that federal law poses no barrier to the exercise of state authority. [Citation omitted.] In both categories of cases, this Court has reviewed the federal question on which the state-law determination appears to have been premised. *If the state court has proceeded on an incorrect perception of federal law, it has been this Court's practice to vacate the judgment of the state court and remand the case so that the court may reconsider the state-law question free of misapprehensions about the scope of federal law.*"

Three Affiliated Tribes v. Wold Engineering, 467 U.S. 138, 152 (1984) (Emphasis added.)

The decision in this case was not merely "influenced" by federal law – it embodies federal law. The appellate court's framing of the issue removes all doubt:

> "[W]ould a federal court apply its own law, or that of California in determining the issue; and, if federal law applies, what does it say?" (App. 7.)[1]

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[1] Plaintiffs' claim that "[t]his case does not present the question of which law a *federal* court should apply" (Plaintiffs' Opposition at 4; emphasis in original) defies the court's own

The appellate court's answer to this question confirms that it viewed its role as a federal court interpreting federal law:

> "We therefore conclude that a federal court would look to *its* own law to determine the effect of the orders in question; even if *it* looked at California law, the policy of this state would reflect the inquiry back to federal authority. In either case, California respects the final federal decision on the issue." (App. 16-17.) (Emphasis added.)

Attempting to minimize the primacy of federal law to the appellate court's analysis, both Oppositions take this passage's reference to state "policy" out of context. They incorrectly assert that the court was referring to such policy as an alternative state law basis for its holding.

In reality, the "it" that is highlighted in the passage quoted above is the *federal* court. The court of appeal was merely adhering to its federal court perspective and attempting to divine how a *federal* court would determine what law to apply. By "reflect[ing] the inquiry back to federal authority," the court was simply restating the issue as a federal one.

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characterization of the issue. Plaintiffs' allegation that Petitioner has "fabricated" (*Id.* at p. 2) a federal question that was not raised in the lower courts is equally unfounded. Petitioner contended to the court of appeal that California's law of res judicata should be applied. The appellate court rejected this contention and framed the issue as what law "would a federal court apply." This Petition arises from that issue.

Because the court of appeal erred in its interpretation of *federal* law and erred in disregarding controlling decisions by this Court (*i.e., Stoll* and *Dupassuer*), this Court's jurisdiction is invoked. *See Three Affiliated Tribes, supra,* (review granted where state supreme court felt constrained by federal statute requiring Indian tribes' consent to civil jurisdiction of state court: Held that federal statute did not divest state of Indian jurisdiction); *United Air Lines v. Mahin,* 410 U.S. 623, 630-631 (1973) (federal question created when state supreme court justices erroneously "felt bound" by U.S. Supreme Court opinion in concluding that state law violated Commerce Clause); *State Tax Comm'n v. Van Cott,* 306 U.S. 511, 514-516 (1939) (review granted where state supreme court relied on overruled U.S. Supreme Court case which "required" exemption of federal income from state tax); *Red Cross Line v. Atlantic Fruit Co.,* 264 U.S. 109, 120 (1924) (review granted to correct state supreme court's reading of U.S. Supreme Court opinion which "required" that admiralty jurisdiction supersede state arbitration statute: Held that admiralty jurisdiction did not affect state law). *See also Zacchini v. Scripps-Howard Broadcasting,* 433 U.S. 562, 568 (1977); *San Diego Building Trades Council v. Garmon,* 353 U.S. 26, 29 (1957); *Standard Oil Co. v. Johnson,* 316 U.S. 481, 482-483 (1942).

B. Resolution of This Issue Will Both Change the Outcome of This Case and Resolve the Conflict in the Federal Circuits.

The Coordinating Committee makes the startling assertion that "this Court's resolution of the conflict in the circuits would not change the outcome in this case."

(Coordinating Committee Opposition at 7.) On the contrary, action by this Court would both lead to a resolution of the conflict in the federal circuits and could compel a different result in this case.

If this Court finds that the appellate court misapprehended the correct federal rule, California's rule of finality would control and collateral estoppel could *not* be given to the interlocutory federal order. By resolving the conflict in the circuits, this Court's decision would impact not only the parties to this litigation, but the entire federal judiciary.

C. *Erie* Applies.

Both Oppositions seek to avoid *Erie* by proclaiming the obvious proposition that the underlying state court action is not grounded in federal diversity jurisdiction.[2] *Erie* is nonetheless implicated because the state court adopted the rule of the federal circuits which contravene *Erie*. Accordingly, the appellate court's decision rests on an erroneous interpretation of federal law.

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[2] The Coordinating Committee takes this tactic one step further and urges that *Erie* does not apply to state law claims based on pendent jurisdiction. (Coordinating Committee Opposition at 10 n.6.) Not surprisingly, no support is offered for this assertion. As the leading commentators have noted: "It frequently is said that the doctrine of Erie Railroad Company v. Tompkins applies only in diversity of citizenship cases; this is simply wrong. The Erie case and the Supreme Court decisions following it apply in federal question cases as well." 19 Wright, Miller & Cooper, *Federal Practice and Procedure* § 4515, at p. 275 (1982).

III.

COLLATERAL ESTOPPEL WAS NEVER GIVEN TO THE CERCLA FINDINGS

The Coordinating Committee falsely asserts that collateral estoppel was also applied to the federal court's CERCLA findings. (Coordinating Committee Opposition at 8-9.) The trial court explicitly *refused* to grant collateral estoppel to the CERCLA liability findings because CERCLA is a status-oriented form of strict liability. This is confirmed in the court of appeal's opinion:

> "Thus, if *Stoll* is an authoritative statement of the law, the first argument is that a federal court would apply the California law of res judicata and collateral estoppel here, *because the issues determined by the jury were relevant not to the CERCLA claims – which are based on strict liability – but to the cross-defendants' state-law claims for indemnity based on shared negligence.*" (App. 7-8.) (Emphasis added.)

It is simply disingenuous to suggest that the federal court's CERCLA findings were, or could have been, afforded collateral estoppel by the state court.

IV.

THE COURT OF APPEAL'S DECISION IS A FINAL JUDGMENT

Without any discussion of Petitioner's case authorities, the Coordinating Committee incorrectly asserts that the appellate court's decision is not final for purposes of this Court's review. The argument ignores the fact that this Petition arises from a mandamus proceeding. As

such, it is a separate action against the lower court which has now run its course and is final for purposes of this Court's jurisdiction. *Madruga v. Superior Court of California*, 346 U.S. 556, 557 n. 1 (1954) ("[t]he State Supreme Court's judgment finally disposing of the writ of prohibition is a final judgment reviewable here under 28 U.S.C. § 1257"); *Bandini Petroleum Co. v. Superior Court of California*, 284 U.S. 8, 14 (1931) (proceeding for a writ of prohibition to restrain a court from enforcing its injunction order found to be a distinct suit and the judgment finally disposing of it found to possess requisite finality); *Detroit & Mackinac R.R. v. Michigan R.R. Comm'n*, 240 U.S. 564, 570-571 (1916) ("[i]t is settled that a proceeding in mandamus is an independent adversary suit, and a judgment awarding or refusing the writ is a final judgment. . . . ").

In contrast, the cases cited by the Coordinating Committee do not involve extraordinary writ proceedings. Those authorities are irrelevant.

V.

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Petition for Certiorari be granted.

Respectfully submitted,

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